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UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

ARIF ALI DURRANI,)	CV No. 06-6281-PA
)	(CR No. 99-470-PA)
Petitioner,)	
)	<u>GOVERNMENT'S REPLY TO DEFENDANT'S</u>
v.)	<u>OPPOSITION TO GOVERNMENT'S MOTION</u>
)	<u>TO TRANSFER OR DISMISS DEFENDANT'S</u>
S.A. HOLENCIK, Warden)	<u>PETITION FOR WRIT OF HABEAS CORPUS</u>
)	<u>PURSUANT TO 28 U.S.C. § 2241</u>
Respondent.)	
)	
)	

Respondent, S.A. Holencik, Warden, United States
 Penitentiary-Victorville, by and through respondent's attorney of
 record, the United States Attorney for the Central District of
 California, hereby submits his reply to defendant's opposition to
 government's motion to transfer or dismiss the Petition for Writ
 of Habeas Corpus filed by petitioner ARIF ALI DURRANI pursuant to
 28 U.S.C. § 2241. This reply is based on the attached Memorandum
 of Points and Authorities, all files and records in this case,
 ///

1 and any further evidence as may be presented at any hearing on
2 this matter.

3 DATED: May 7, 2008

Respectfully submitted,

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5 THOMAS P. O'BRIEN
United States Attorney

6 CHRISTINE C. EWELL
7 Assistant United States Attorney
Chief, Criminal Division

8
9 /S/
10 WILLIAM A. CROWFOOT
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11 Attorneys for Plaintiff
12 United States of America
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MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

Petitioner Arif Ali Durrani ("defendant") is presently in federal custody serving a 150-month sentence imposed by the district court in the Southern District of California following his conviction in 2006 in United States v. Arif Durrani, CR 05-1746-LAB (S.D. Cal. 2006). (CASD CR 127).¹ On October 2, 2006, defendant filed a petition for a writ of habeas corpus in the instant case (CR 1; "Def's Mot."). He seeks an order of immediate release pursuant to 28 U.S.C. § 2241. (Def's Mot. 1-2).

In its motion to transfer or dismiss defendant's § 2241 petition the government argued that this Court lacks jurisdiction to entertain defendant's petition and that it should be construed as a petition under 28 U.S.C. § 2255 and transferred to the Southern District of California where defendant was convicted and sentenced or dismissed. The government argued that defendant is imprisoned based on his conviction and sentence in United States v. Arif Durrani, CR 05-1746-LAB (S.D. Cal. 2006). (CASD CR 127). The indictment in this district, in United States v. Arif

¹ "CR" refers to the Clerk's Record in the instant case, "CACD CR" refers to the Clerk's Record in United States v. Arif Durrani, CR 99-470-PA, "CASD CR" refers to the clerk's record in United States v. Arif Durrani, CR 05-1746-LAB (S.D. Cal. 2006), "08-55082 CR" refers to the Clerk's Record in Arif Ali Durrani v. S.A. Holencik, CA No. 08-55082 (9th Cir. 2008), and "08-70269 CR" refers to the Clerk's Record in Arif Ali Durrani v. United States District Court for the Central District of California, et al., CA No. 08-70269 (9th Cir. 2008). Each such reference is followed by the document control number which was obtained through PACER.

1 Durrani, CR 99-470-PA (the "1999 indictment"), was dismissed with
2 prejudice on September 23, 2005 and this Court ordered defendant
3 released. (CACD CR 27). His subsequent arrest, detention and
4 transportation to the Southern District of California were based
5 on the arrest warrant issued in that district. (CASD CR 2).

6 In his opposition to the government's motion ("Def's Opp."),
7 served on the government on April 23, 2008, defendant reiterated
8 that his § 2241 petition seeks to "correct [this Court's]
9 erroneous Release Order" of September 23, 2005. (Def's Opp. 2).
10 In essence, defendant argues that this Court, by ordering
11 defendant released after dismissal of the 1999 indictment in
12 effect deprived defendant of the opportunity to challenge the
13 legality of his arrest in that case. (Id.). This argument lacks
14 merit and this Court should stand by its initial determination to
15 construe defendant's petition as a § 2255 petition required to be
16 filed in the Southern District.

17 II

18 STATEMENT OF FACTS

19 A Statement of Facts is set forth in the government's motion
20 and is not repeated here.

21 III

22 ARGUMENT

23 A. DEFENDANT'S PETITION SHOULD BE CONSTRUED AS A PETITION
24 PURSUANT TO 28 U.S.C. § 2255

25 On September 23, 2005, this Court dismissed the 1999
26 indictment against defendant and ordered him released. But for
27 the arrest warrant issued in the Southern District of California,
28 defendant would have been free to continue his journey to

1 Pakistan or to attempt to return to Mexico to contest the
2 legality of his expulsion. Instead, he was transported to the
3 Southern District to answer to charges stemming from facts and
4 circumstances unrelated to those which resulted in the 1999
5 indictment. After a protracted course of pre-trial litigation
6 and a jury trial, defendant now finds himself imprisoned, not
7 because this Court released him in error, or failed to provide
8 safe conduct out of the country, but, because he was unwilling to
9 present to the district court in the Southern District, as he
10 should have when he had the opportunity to do so, the claims he
11 raises here.²

12 Defendant implies that the Ninth Circuit, in remanding this
13 matter, determined that this Court erred in its July 16, 2007
14 determination that defendant's § 2241 petition was, in fact a
15 § 2255 petition, required to be filed in the district in which
16 defendant was convicted or sentenced. (Def's Opp. at 11). The
17 Ninth Circuit did no such thing. On November 16, 2007, the Ninth
18 Circuit issued an order in which it found that, because the
19 Southern District had vacated an earlier judgment and allowed
20 defendant to withdraw his § 2255 motion in CV-06-1730 (S.D. Cal.

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22 ² See, e.g., Case Status and Notice Order dated December
23 12, 2006, defendant's Withdrawal of Petition, filed January 3,
24 2007, and Amended Judgment dated October 12, 2007, in Arif
25 Durrani v. S.A. Holencik, CV 06-1730-LAB (S.D. Cal. 2006),
26 attached as Exhibits A, B and C, respectively, to the
27 government's motion to transfer or dismiss defendant's petition
28 in this case. The referenced exhibits address the Southern
District's re-characterization of defendant's petition pursuant
to 28 U.S.C. § 2241, which raised issues also raised in the
instant case, as a § 2255 petition, and defendant's refusal to
accept that re-characterization or to proceed with his petition.

2006), his filing in the instant case was not successive, as this Court had assumed in not transferring it to the Southern District. (CR 10). In addition, the Ninth Circuit noted, presumably for this Court's information and consideration, but without further comment or analysis, that on September 10, 2007, defendant had "filed a document [in the Ninth Circuit] stating that [defendant's petition in the instant case] challenges, not a Southern District decision, but rather a release order issued by [this Court] in Case No. CR-99-470-PA." (Id.). The Ninth Circuit then ordered defendant's motion transferred back to this Court without limiting this Court's discretion. (Id.).

This Court's July 16, 2007 determination that defendant had filed a § 2255 claim in the wrong district continues to be correct. Defendant's contention that he was extradited from Mexico is unfounded and there is no merit to his argument, based on the doctrine of specialty, that upon the dismissal of the 1999 indictment he should have been allowed to leave the United States. In his opposition, defendant ignores the fact that had he been extradited from Mexico, he would have records of those proceedings upon which to rely.

There is also no basis in fact for defendant's contention that he was kidnaped in Mexico. Defendant was notified by the government of Mexico on June 14, 2005, that he was expelled from that country for failure to maintain his immigration status. (See Def's Opp. Appendix E, also attached with a translation as Exhibit D to the government's motion to transfer or dismiss defendant's petition). Defendant may disagree with that action by the Mexican government, but this Court is not the place in

1 which to seek a remedy, nor is a mis-characterized § 2241
2 petition the vehicle.

3 In short, nothing about the circumstances of this case
4 required that this Court issue a release order in September 2005
5 shielding defendant from a subsequent arrest pursuant to the
6 Southern District warrant. Thus, defendant finds himself in
7 custody based on the conviction and sentence in the Southern
8 District and not as a result of any erroneous decision by this
9 Court.

10 **III**

11 **CONCLUSION**

12 For the foregoing reasons, the government respectfully
13 requests that the Court construe defendant's Petition for Writ of
14 Habeas Corpus pursuant to 28 U.S.C. § 2241 as a petition
15 challenging the legality of his conviction or sentence pursuant
16 to 28 U.S.C. § 2255 and, as such, transfer defendant's petition
17 to the Southern District of California, where defendant was
18 convicted and sentenced, or, alternatively, dismiss the petition
19 without prejudice.

20 DATED: May 7, 2008

Respectfully submitted,

21 THOMAS P. O'BRIEN
22 United States Attorney

23 CHRISTINE C. EWELL
24 Assistant United States Attorney
Chief, Criminal Division

25 /S/
WILLIAM A. CROWFOOT
Assistant United States Attorney

26 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, United States Courthouse, 312 N. Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

that I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

GOVERNMENT'S REPLY TO DEFENDANT'S OPPOSITION TO GOVERNMENT'S MOTION TO TRANSFER OR DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

service was:

☐ Placed in a closed envelope for collection & interoffice delivery addressed as follows:

☒ Placed in a sealed envelope for collection & mailing via United States Mail, addressed as follows:

☐ By hand delivery addressed as follows:

☐ By facsimile as follows:

☐ By messenger as follows:

☐ By federal express as follows:

ARIF DURRANI (FED REG #09027-014)

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This certificate is executed on May 7, 2008, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.

/S/
Roland Hernandez